Constitution Amendment—A Study

Recently the ruling congress party has proposed certain amendments of the constitution. These proposals put forth by the Swaran Singh Committee, a committee constituted by the ruling party for the said purpose for obvious reason has drawn the attention of the different circles including the political parties, urists, lawyers and constitutional experts. Some political parties claiming communists, Marxist-Leninists and revolutionary socialists, while making their comment on these moves for amending the constitution have expressed the necessity they feel to re-orient the constitution so as to reflect "people's will and aspiration" and with this desired aim in view they have proposed to incorporate enough of so-called "attractive" and "high sounding" suggestions. Some have also expressed that they felt the necessity of amending the constitution long before the ruling party felt the need and undertook the task for bringing about the proposals for constitutional changes.

We, however, think that all these moves for amendment of the constitution with the desired aim and objectives behind them deserve to be critically examined and analysed on the anvil of Marxism-Leninism.

In our issue, dated 15-3.76, we discussed in detail, the general nature of constitutional amendments that were being recently undertaken in different countries of the capitalist-imperialist world, with the motives, purposes and objectives therein in favour of bringing about all these constitutional changes.

By means of thorough and objective analysis, we have shown that while in the era of pre-monopoly competitive capitalism, the bourgeoisie believed in the existence of rule of law, bourgeois democratic rights and freedom with a free and independent (no doubt in the bourgeois sense) judiciary to check and arrest any possible violation of these both and the separation with check and balance of power between the different bourgeois state organs so that none of them may become the citadel of unquestionable and unchallengeable supreme power, in the era of monopoly capitalism, however, the attempt to concentrate and centralise political power is being manifested through growing negation of democracy, democratic rights, curtailment of the jurisdiction and power of the judiciary coupled with the attempt to vest supreme power in the hands of a particular organ of the state etc. etc. It is, therefore, quite likely that suitable changes and alterations in the bourgeois constitutional frame work will be attempted to incorporate such aims and objectives.

Proposals to change Indian constitution

All should agree that the Indian Constitution was framed at a time when though internationally in the capitalist world it was an era of monopoly capitalism and finance capital, but in the national plane, monopoly capitalism was then yet to attain a fullfledged character and the scope of free competition, to a certain extent, was still prevailing among the bourgeoisie. It was quite likely that to guarantee this limited free competition, the constitutional experts would try to introduce separation and balance of power between the different organs, legislature, executive and judiciary, and apprehending that a particular bourgeois political party, after coming to power might utilise the legislature to realise their narrow sectarian interest, thought it prudent to empower the judiciary with the power to interpret and declare any enactment or any amendment of the constitution, of course if it deemed to be in accordance with the spirit of the constitution, as *ultra vires*. Apart from this power to review, the judiciary was empowered to safeguard

(Contd. to Page 2)

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Regularisation of 'Benam' Lands—How far it goes to touch the real problem

The Government, of late, has declared its intention to regularise 'Benam' transactions. "A Bill to regularise 'Benam' (fictitious) transfers of land by conferring proprietory rights on nominal holders is expected to be tabled in the next session of Parliament, reports Samachar" (Statesman—10.5.76). There is much hue and cry over this reported move.

The declaration of this intention on the part of the government, however, is not new ; such declarations were made in the past but there has hardly been any headway in the matter of recovering 'Benam' lands and their distribution to landless and poor peasants. Why this has been so ?

Though in the main, bourgeois democratic reforms in land problems have been done, due to corruption at the official levels and land-owners' unholy l nk with them, land over the land ceilling laws have been illegally grabbed by the jotedars by means of fake transactions and fictitious records. Thus everyone knows it very well, therefore, that the actual problem in land reform lies in recovering the 'benam' lands from the cultches of the evador jotedar families and distributing them among the rural poor and landless peasants. It is not and never was the problem to regularise the 'benam' or fictitious tranfers of land once made to evade the land ceiling laws. But through this present proposed law it is being tried to pose the quesion as if giving proprietory right of the 'benam' lands to the fictitious holder is the problem and as if by this law the problem will be magnificiently solved. Thus attempts are being made to deliberately divert the attention of the people, particularly of the deprived landless peasants, from the real problem to a fake one under the slogan of benefitting them. For, there is sufficient ground to apprehend that the landless poor peasants will be least benefitted by this law for, in most of the cases lands over the land ceiling laws were fictitiously transferred to the nearest relatives of the land-owners and not distributed to the landless poor peasants and if this law is successfully effected the 'benam' transfers will be simply regularised in favour of the same evader land-owner families. Excess lands will not be recovered and distributed to the landless. On the contrary, if there had been any hope for recovering those 'benam' lands in future and distributing it among the destitute peasants that will be burried for ever.

So supposing the government's move succeeds, it will only mean legalising the fake transactions when the jotedar's socio-political influence and their link with bureacracy has not been snapped in any way. Providing the correct perspective as well as valuable guideline to the whole issue, Comrade Shibdas Ghosh, our beloved leader and teacher and an eminent Marxist thinker of the era showed at the time of the first United Front Government in West Bengal :

"In conducting mass movements it is necessary to have the outlook perfectly clear on certain points. Every student of ethics and jurisprudence know that what is legal may not be always justified or moral. Similarly, everything illegal in the eye of law is not necessarily unjustified, illegitimate and immoral. The government will fail to formulate correct policy towards mass movements—if it is not guided by this outlook. And in that case it will not be possible to acquire the land kept in possession of the jotedars in excess of the ceiling under 'Benam' transactions and distribute it to the poor and landless peasants. But it is an imperative duty of the United Front Government to do so. It is impossible to do with the help of law. ...It is known to all that these jotedars have kept in their actual possession huge quantity of such 'benam'

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Can Parliament, a creature of the original constitution

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any violation of the fundamental rights formally inscribed in the constitution and arrest any possible arbitrary action on the part of the authority, who ever it may be including the administrative machinery, against any individual. Of course, within a socio-economic, political framework of capitalism, at a time when capitalism became out and out reactionary and moribund it was anybody's guess that all these rights and safeguards against arbitrary power were hardly realisable in practice by the toiling millions of the country. ... ...
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.... whenever and from whatever quarter any suggestion is raised for the amendment of the constitution, any right thinking socially conscious being will feel the necessity and obligation to thoroughly scrutinize the said proposals in the perspective of the existing socio-political and economic condition of the country. Now in a bourgeois republic, any proposal for amending the constitution, from the academic and theoretical standpoint may result into any one of the two alternative goals. Either it may widen the scope of democracy (political and economic determinants however tell just to the contrary) or on the contrary, whatever 'pious' wishes' and 'good intentions' man there be behind these moves, and to what extent it may superficially appear as 'pro-people', ultimately it will help to bring about and consolidate fascism through constitutional means the way, so far the fascists have attempted in different countries and at times succeeded too. Political and economic determinants, however, direct only the second alternative historical course for the "glorious democratic republic" of the earlier period, leading to all out centralisation of power.

Now, among the different proposals, particular one that deserves the first attention is the recommendation put forward by Swaran Singh Committee. The proposals of the committee on serious scrutiny may reveal and which of course the committee has also in so many words expressed—an attempt to cut or curtail the existing status and power of the judiciary, one of the three important organs of the state referred to in the constitution. Perhaps this is the most important change which some opine to be a 'basic change' that has been proposed by the committee. A little elaboration of the suggestions may clearly reveal this self-evident objective.

Till now, according to the existing constitution the judiciary (in fact the Supreme Court) has enjoyed the right to declare any amendment of the constitution, if it deems so, as *ultra vires*. But if the proposed change is implemented in practice then the judiciary will no more have the power to review any amendment of the constitution done by the Parliament, on any ground. For, the committee has clearly spelled out to introduce an article "to the effect that any amendment of the constitution shall not be called in question in any court on any ground."

In the existing constitution, both High Court and the Supreme Court possess the right to declare void any law which may be inconsistent with or in derogation of the fundamental rights. Here too, a proposal for curtailment of power has been suggested. According to the proposal, the High Court should no more enjoy the right to give its verdict on the constitutional validity of any legislature enacted by the Parliament. Again in case of the Supreme Court also, the position will not be as it is now. At present, a single bench of the Supreme Court can decide the issue. But if the proposal is accepted then the minimum number of judges who are to sit for the purpose of deciding any case involving constitutional validity of a law shall be seven and the decision of the Supreme Court declaring a law invalid must have the support of no less than two-thirds of the number of judges constituting the bench. A simple law of probability can easily explain that the chance of invalidating a law on constitutional ground will then become far less than the possibility existing at present, if this proposal is implemented in practice.

In regard to the existing jurisdiction of High Court in the matter of deciding constitutional validity of any enactment by the state legislature, the status-quo has been proposed to be maintained. But when according to the existing system, one judge can sit for the purpose, if the proposed alterations are accepted then five judges will make a bench to be constituted for the purpose of deciding any case involving the constitutional validity of a law enacted by the state legislature. Like that of the Supreme Court, here too, the decision of the court declaring a law invalid must have the support of not less than two-thirds of the number of judges constituting the bench. Again "in a High Court where the total number of judges is less than five the full court shall sit and the decision as to invalidity of a law should have the support of the whole court." Now if this proposal is accepted, then to what extent the probability will remain for invalidating a law on constitutional ground is anybody's guess.

Apart from these, two other notable changes, among others, have been suggested by the committee. One of these relates to the writ jurisdiction of the judiciary and the other involves the issue of directive principles of the state policy.

According to the existing provision, while both the Supreme Court and High Court may exercise powers to issue writs to enforce the fundamental rights, the latter may even issue writs "for any other purpose", and this particular constitutional provision formally put some additional judicial power in the hand of High Court to safeguard any individual from any action which the court may deem to be arbitrary, illegal and unconstitutional directed against him by any authority including the administrative machinery. The Committe recommends the restriction of the scope and ambit of this particular constitutional provision, well known as the Article 226 and thereby desires to take away the powers of High Court to issue directions, orders or writs for purposes other than the enforcement of the fundamental rights. And it has been clearly specified that no writ jurisdiction shall lie in relation to matter or matters concerning the revenue or act done in its collection, the land reforms, procurement, distribution of grain and election matters.

Now let us throw some light on the proposed amendments regarding the implementation of the 'Directive Principles of the State Policy'. In the existing constitution certain principles of policy have been mentioned to be followed by the state with the stated objective "to secure a social order for the promotion of welfare of the people" so to say. These principles, which are six in number include, right to an adequate means of livelihood for all the citizens, the distribution of the ownership and control of the material resources of the community such as to best serve the common good, the operation of the economic system in the manner that does not result in the concentration of wealth and means of production to the common detriment etc. etc. It has been proposed that no law giving effect to any or all of the directive principles of the state policy shall be deemed void on the ground that it contravenes the 'Fundamental Rights'. In fact, this is an attempt to widen the previous Twenty Fifth Amendment inserted Article 31C in the constitution. While the said amendment done four years back has forbidden the courts from declaring any enactment made for securing the above mentioned last two of directive principles of state policy, the present proposal further extends the scope of the said Article so as to cover any legislation in respect of any or all of the directive principles of the state policy.

The suggestion has also been made to curtail the jurisdiction of the judiciary in relation to service matters and proposals have been made to set up Administrative Tribunals, both at the state as well as at the central level to decide cases relating to the service matters. The High court's jurisdiction to decide appeal from Labour Courts and Industrial Courts has been proposed to be taken away and a suggestion has been made to set up an All India Appelate Tribunal to decide on such appeals.

Among the other important suggestions, reference may be made to some proposals that have been made regarding 'Centre State Co-ordination'. It has been observed that the centre 'should have the power to deploy police or rather similar

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install itself as master and make its creator subservient

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forces under its own superintendence and control in any state.' And suitable provisions may not be far from realising this objective.

Moreover, the final report of the Committee has recommended a new article to be introduced to make a clear declaration of Emergency restricted in scope to any particular part of the country as specified in the proclamation by the President.

(The Statesman 23.5.76)

Simply an alteration of a Constitution cannot bring about change in the socio-economic framework of a country

Can Parliament a creature of the original constitution install itself as master and make its creator subservient ?

The proposed suggestion, as we have earlier mentioned, if accepted, will on the one hand vest unchallengeable supreme legislative power with the parliament, one of the organs of the state and on the other hand will curtail the traditional power and status so long enjoyed by the judiciary.

The logic that has been put forward from different quarters, the committee itself and paticularly by the National Council of the CPI, in favour of these amendments may deserve attention. The argument that the committee has put forward in favour of their suggestion that any amendment of the constitution done by the parliament shall not be called in any court or in other words, their suggestion of making the parliament the supreme legislative body with unquestioned and unchallengeable power to amend the constitution must be summarised as follows. They maintain that the constitution is the supreme law of the country and any amendment made thereof is, as such, a fundamental law as is the rest of the constitution. Perhaps they desire to express that, as the original constitution itself or any of its parts cannot be challenged in a court of law, so also, one cannot challenge any of its amendment made following the method provided in the constitution, which then automatically becomes an inherent part and parcel of the original constitution itself. There is however, just an opposite argument. According to this argument the parliament cannot have unlimited and unchallengeable power to amend the constitution. For, if there is no limit to its amending power, then it is to be accepted that the parliament may, through amendment, if it desires so, abolish the parliament or even repeal the constitution itself, a thing which some affirm the parliament can never have the right to do under any circumstances. They observe that the original constitution is supreme and the parliament like other two organs, the judiciary and the executive are creature of the original constitution.

A creature of the original constitution cannot usurp the supremacy of its creator i.e. the original constitution. It cannot install itself as the master and make the original constitution, its creator; subservient. So, logically, a creature of the constitution can never have the right to basically alter the original constitution or change the basic framework of its creator. So, any amendment done by the creature may require to be checked for any attempt to change the basic framework of the original constitution. It is for this reason that any constitutional amendment done by the Parliament, a creature of the constitution cannot enjoy the same immunity as the original constitution with its basic framework. And the validity of any constitutional amendment is to be judged on the touchstone of the original constitution whereas it is not the same with the original constitution. Just as the Parliament, a creature of the constitution cannot alter the basic structure of the constitution its creator, so also, the judiciary another creature of the original constitution does not have the power to subject the original constitution, its creator to judicial scrutiny. Of course it does have the power to scrutiny i.e. if there is any attempt to alter the basic framework of the original constitution through amendment or alteration.

As to why the judiciary should enjoy the power to scrutiny any change or alteration of the constitution done by the Parliament, when the parliament, the body of the elected legislators is competent enough to do the same in conformity with the basic spirit of the constitution, it has been argued that it is not for the assumption that "mere knowledge of law does give a judge an idea of the requirements of the society" nor for the presumption that the judges are more competent than the elected legislators, the judiciary has been empowered with the aforesaid right to scrutiny. However and to whatever extent wise and competent may be the legislators, any alteration or amendment done by them deserved to be scrutinised it the said action has been done in conformity with the basic spirit of the original constitution. Because none else than the Nietzschian superman and the tyrant can claim themselves to be always 'Right' and their actions always beyond scrutiny. And this power to scrutiny, can under no circumstances, lie with the parliament or anybody constituted by the parliament for the said purpose because of the fact that this will be a gross violation of that elementary principle of jurisprudence according to which none, whatever elited position he may enjoy, can act as the judge of his own cause and action. The proposed constitutional Amendment Committee suggested for this purpose by the CPI National Council cannot be accepted without violating this elementary principle of jurisprudence.

Some apprehend that a case of violation of another elementary principle of jurisprudence and rule of law may happen following the acceptance of the Committee's proposal of curtailing the power of High Court to review election disputes. The committee has declared that "no writ shall lie in relation to election matters" and retained the recommendation following which another body has to be set up to consider disputes in reguard to the offices of President, Vice-President, Prime Minister and Speaker (Art. 329A) and further recommended that a similar body may be set up to consider disputes over elections of members of parliament and state legislatures. According to the proposal, the said body should be composed of nine members, of whom, three each to be chosen from the Rajya Sabha and the Lok Sabha and three to be nominated by the President. As the members of the Parliament will constitute the majority in the said body, there is every possibility that the party enjoying majority in the parliament, for their own interests may try to influence the body and make decisions in their favour. This will violate the principle of 'impersonal justice' and 'equality of all before the eye of law'.

Apart from the above mentioned logic that has been put forth by the committee in favour of supremacy of the parliament so to say, other reasons have also been put forward for defending the curtailment of the power of judicial review in general and the proposed unchallengeable and unlimited power in the hands of the parliament to amend the constitution in particular. In regard to the observation of the Supreme Court that the Parliament has no power to alter the basic structure of the constitution by amendment it has been observed that".... there remains the danger of any radical amendment for facilitating social and economic advance being struck down by the supreme court as being contrary to the 'basic structure' if that theory is not given up by the Supreme Court" (C-I National Council's proposals). So according to them "...some radical constitutional amendments in the present circumstances will always be open to challenge...."They think that "the uncertainty must not be allowed to stand in the way of going ahead with the urgently-needed amendments to the constitution."

"The urgency" according to them "has been particularly underscored by the recent developments and the great popular urge for radical social and economic changes which are essential among other things, to destroy the base of right reaction and fascism. These amendments must necessarily be aimed at removing all constitutional and legal obstacles to the enactment of progressive measures and their implementation." (Ibid) They further feel that the power of the judicial review "has been exercised in favour of the vested interests to obstruct and negate progressive legislations and administrative measures." So they think that "some changes in the constitution are immediately necessary to put such reforms and related measures outside the reach of the judiciary by making them non-judiciable." (Ibid)

In regard to the issue of keeping the legislation enacted to implement the directive principle of the state policy outside the jurisdiction of the judiciary, i.e. in regard to the question of extending the sphere of the present

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(Contd. from Page 3)

Article 31C, reference has been made to the once made suggestion of B. N. Rao that "in the event of conflict arising between the directive principles and the fundamental rights the directive principles which concern the community as a whole should prevail over the rights of the individual." (Ibid) The existing power of High Court to issue writ for purposes other than enforcing the fundamental rights has also been criticised in strong terms. They have observed that "this has resulted in thousands of 'Stay Orders' and other forms of judicial intervention to hold back and even bar implementation of economic and other measures including administrative actions. The land reforms have been the worst casualty of Article 226" (Ibid).

Or in other words, their contention is that the judiciary serving the interest of the vested interest with the aid of its power of the judicial review is frustrating any attempt for amendment or any enactment or any 'progressive measure' designed to be implemented to bring about "radical transformation" of the socio-economic condition of the people. It is for this very conservative attitude of the judiciary, they apprehend, that neither "progressive" land reform measures can be implemented nor suitable acts can be framed to implement the directive principle of the state policy in practice. Such a situation, they think can of course, be basically changed and the path to "radical transformation" can be opened (capitalism no problem at all!) through suitable enactments and amendment of the constitution (even if it is a bourgeois constitution!) provided the judiciary is deprived of its power to review or scrutiny any amendment of the constitution or any enactment and the parliament is made the depository of unquestioned unchallengeable supreme legislative power. Now this observation on their part quite logically has created a number of questions among the people at large.

Simply an alteration of a constitution cannot bring about change in the socio-economic framework of a country

It is no doubt a fact that judiciary, at times, obstruct certain legislations. But the question is, can one in reality achieve "radical transformation" through legislation, when there is capitalism, even if the judiciary does not stand in the way? Can one achieve "radical transformation" of the society, through amendment of a bourgeois constitution? Can such "radical transformation" be achieved by the Parliament through amendment and enactments when the Parliament being a creature of the constitution itself, is nothing but a bourgeois organ? Those who are acquainted with the illuminating lesson of one of the greatest Marxist thinker of the era, Comrade Shibdas Ghosh, our leader and teacher knows it well that parliament, developed in a particular historical phase in the development of production as the superstructure of the capitalist economy to serve the interest of the ruling bourgeoisie. And to day, even to the bourgeoisie parliament is fast loosing its utility. So even if the power of review of the bourgeois judiciary is abrogated as suggested and unquestionable unchallengeable legislative power is vested with the bourgeois parliament, can it basically alter the situation to safeguard the interests of the people? Can "radical transformation" as the CPI has observed be achieved through legislation keeping intact a capitalist framework? Can they cite any example of a bourgeois country, where through constitution amendment and enactments, "radical transformation" has been achieved? If they can cite at least one example, all must accept their proposition. In reality what the CPI is preaching in the name of bringing about revolution and 'radical transformation', is nothing but 'constitutionalism'. It is not only the CPI, some other leftist parties also, in a subtle manner are spreading the same idea. Some has observed that as the Constituent Assembly that drafted and accepted the constitution was not truly representative in character in the sense that the representatives of the then left political parties was not included, the constitution could not reflect the 'people's will' and so it deserved amendment. Now one may feel the necessity for amending some parts of even a bourgeois constitution to give vent to the democratic rights—if of course that is feasible in practice. This is understandable. But if anyone observes that the constitution could not reflect the "people's will and aspiration" as it was not made by a body constituting the representatives of the left parties what does it mean? Does it mean that if a body constituting all the political forces of the country including the left political parties amend the constitution then it may reflect the 'people's will'? Can ever a bourgeois constitution reflect the will and aspiration of the working people? These parties too through a bit different phrasemongering are spreading constitutionalism. Again some other has put suggestion that any amendment instead of making through the parliament, should be made through referendum. As if, if the change is brought about through so called 'public participation' i. e. through referendum then one can transform an instrument reflecting the will and aspiration of the bourgeoisie into an organ reflecting the will and aspiration of the people. The same old rubbish constitutionalism!

These parties are either ignorant of the objective process following which the constitution of a country develops and innocent of the relation that exists between the basic socio-economic system of a country and its constitution—the part of the superstructure or are trying to confuse the people with certain underlying motives. Because, who does not know that a bourgeois constitution is a superstructure of the capitalist economic system protected by the capitalist state machine?

One should realise that in a bourgeois set up, it is the permanent wings of the bourgeois state machine that rules the country, protects the capitalist economic system based on class exploitation and the capitalist relation of production. And a bourgeois constitution is nothing but a formal document that provides legal and political sanction to this capitalist class exploitative economic system. In general the Constitution is framed to reflect the general governing pattern of ruling a country by the ruling class. So any change or alteration in the governing pattern may bring about necessary alterations in the constitution to give it a legal and political sanction. At times the ruling class does not object to implement certain constitutional changes, provided that it does not go against their basic class interest and thereby introduce minor changes here and there of the governing pattern of the country, following the changes introduced in the constitution. But the ruling class with the state machine under their control can never allow to implement any constitutional change, the introduction of which may necessitate the alteration of the socio-economic system and thereby jeopardise their class interest. So such an altered constitution, if one desires to implement in practice, should be backed by the necessary force to thwart and frustrate the resistance put against by the permanent wings of the state machine, including the army that protects the bourgeois state. And this amounts to the revolutionary overthrow of the basic capitalist economic system, the capitalist state. It is not at all a simple job like amendment of a bourgeois constitution done by seating in a bourgeois parliament.

So one can easily guess that so long the capitalist state machine, the capitalist economic system exists, no appreciable change—not to speak of any fundamental change, for the well-being of the exploited people can be realised through amendment of the bourgeois constitution. In such a state of affairs, those who talk of "radical transformation" simply through constitution amendment or those who in a different vocabulary try to create the same idea among the people in a bit round about way by observing that the constitution as it does not reflect the 'people's will' deserves to be changed accordingly, are aiding to spread nothing but 'constitutionalism' which emphasises that the alteration of a constitution is the prior and major task to be performed to bring about qualitative change in the socio-economic and political milieu of the country. And this, of course, has nothing to do with Marxism-Leninism.

Even if one keeps aside the theoretical arguments and looks upon one's experience what does one find? Is it not one's experience that if some legislation can at all be enacted to give some relief to the hard-pressed

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To fulfil their class motives, social democrats strip off the traditional status and power of the judiciary

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oppressed people and meet some of their democratic demands—then even such a legislation harmless in the sense that it does not touch even a single hair of capitalism, cannot be readily implemented in practice? Is it not a fact that the ruling class, the vested interest in collusion with the bureaucratic administrative machinery try to find out many a loophole and frustrate the objective of the legislation? Is it not true that such a legislation even for its minimum implementation in practice necessitates people's mighty democratic movement behind it? One should not have to travel far to seek such numerous examples. The enactments on land ceiling and more and more concentration of lands in the hands of the jotedars, the rural bourgeoisie violating all those acts may be cited as glaring examples. Even the CPI agrees to the fact that "the 'draw backs' and 'limitations' of the present system "...are inherent in a bourgeois system and in the capitalist path of development" (Ibid). One may then ask them, how can they achieve "radical transformation" through enactments keeping in tact the capitalist path of development?

The proposed constitutional change as we have earlier mentioned, contains suggestion for curtailing the power of the judiciary to review any enactment on land reform and on the implementation of anyone or all of the directive principles of the state policy enumerated in the part IV of the original constitution. Now a question that may haunt the people, is, suppose that at any time staunch reactionary anti-people enactment is made in the name of land reform (and none can eliminate such an eventuality so long there is capitalism), then what will happen? If the power of the judiciary is curtailed then no scope will be there to move for any constitutional remedy against such enactment. Though of course we know that the people may not always expect proper constitutional remedy and justice in a capitalist framework, but anyone may feel that neither this nor any other thing can act as a ground in favour of eliminating the scope of the existing constitutional remedy against such enactments once for all. For this will tantamount to a permanently closing down the way to move for what ever little chance of getting benefit of justice that still exists in a bourgeois set up—a step which ought not to be taken under any plea or pretext so long capitalism. is there.

The judiciary is stamped 'reactionary' for defending attempted move to curtail its power and transform it into "committed judiciary"

To fulfil their class motive, social democrats strip off the traditional status and power of the judiciary

Regarding the directive principles it may be mentioned that four years back an amendment introduced Article 31C in the constitution curtailing the right of the judiciary to review any enactment on perhaps the two most important directive principles out of the full list. This time a suggestion has been made to widen Article 31C so as to cover the full list of the directive principles.

It is up to the people to assess actually what benefit they have received during the last four years out of any implementation of the social democratic measures enacted in the name of implementing the directive principles. And from this experience, they may build up their future expectation, and of course to what extent their expectation will rise is within anybody's guess. Let them wonder, if the fulfilment of such an expectation, deserves such a cost like depriving them of the right to move for constitutional remedy against any enactment, what so ever!

Now while the CPI through its National Council proposals has lend its unstinted support to such a move, the CPI(M) too has lend their support—though no doubt somewhat in a clever manner.

In People's Democracy dated 11.1.76 it has been observed that the "CPI(M) holds that not only laws intended to give effect to the principles specified in Article 39 (Directive Principles on Land Reform) but every law that is made to protect the fundamental rights of the toiling masses should be outside the scope of Courts". Now the question is, when the original constitution has empowered the judiciary to protect the fundamental rights, why so much emphasis has been given to keep any law made to protect the fundamental rights outside the purview of the judiciary? One cannot comment that as our CPI(M) friends do not rely on the role of the judiciary, so they have had to make such a suggestion. Because in that case they would have clearly expressed their suspicion regarding the role of the judiciary to safeguard the fundamental right—a thing which they have not done at all. However, on closer examination their real intention will become clear.

It is a fact that according to the proposal of the Swaran Singh Committee, no law made to give effect to the directive principles should be challenged even if it contravenes the fundamental rights. Our CPI-(M) friends have their full desire to lend support to this proposal. But apprehending that the people may then be suspicious about their real attitude towards fundamental rights they have taken recourse to a clever tactics. They have taken a very clever stand so they may support the proposal but still try to pose themselves as the champions of the fundamental rights.

An important issue that may particularly draw the attention of all because of the fact that this too, like the proposal of Swaran Singh Committee, involves the question of giving constitutional protection to certain Acts, is the 40th Constitution Amendment Bill recently passed by the Parliament (by 313 to one vote in the Lok Sabha and 178 to none vote in the Rajya Sabha). The bill has tagged the Press Act (Prevention and Publication of Objectionable Matter Act.) along with Land Peform and some other Acts to the Ninth Schedule (containing 64 Statutes), and this full package has been given the constitutional protection from being challenged in court on the ground of being violative of fundamental rights. Now particularly the two things amoñg others for which the bourgeoisie once felt proud of their republic, were, according to their own claim, the uninfringeable freedom of press and the inviolable fundamental rights. Now in a changed socio-economic and political situation on the apprehension that this freedom of press may at time create obstacles against their own freedom, they have taken recourse to various enactments "to properly guide and direct" this freedom of press along the path chosen for it by them. Again, apprehending lest this enactment should encroach the fundamental rights, they have imposed restriction on the jurisdiction of the very fundamental rights!

It is often observed and the CPI too has made a similar comment in their National Council proposals that the judiciary has "shown pronounced sympathy for the vested interests." Is it a revelation of something new or something unexpected? Do they expect that the bourgeois judiciary, instead of serving the interest of the bourgeoisie, the vested interests, will serve the cause of the toiling exploited millions? Comrade Shibdas Ghosh, an outstanding Marxist-Leninist thinker of the era, our leader and teacher, has, with a brilliant analysis, shown how in a class divided society the guiding laws and legality as an integral part of the dominant class thinking serve the interest of the ruling class. And therefore, it is crystal clear that in a bourgeois society the judiciary, as an instrument in the hands of the dominant class, like other bourgeois organs, will serve the interest of the bourgeoisie. The bourgeois judiciary has its origin in the bourgeois society. It has to serve the interest of the bougeoisie and so long the bourgeois society continues, it will exist as an instrument in the hands of the bourgeoisie to serve and protect their interest. This is nothing new, and anybody with the ABC of Marxism-Leninism should understand this simple truth. Perhaps the problems lie elsewhere too. It is no doubt a fact that the bourgeois judiciary serves the interest of the bourgeoisie. But at times it may so happen, that the judiciary being influenced by the old and traditional sense of bourgeois legality (of the era of pre-monopoly competitive capitalism) and the traditional bourgeois mental make up may not see eye to eye with the ruling section of the bourgeoisie regarding various social democratic steps, measures and enactments that the latter desires to undertake and at times it may even oppose and obstruct any such move. Of course this is not unusual; and none should however, not for any reason, search 'progressiveness' in a bourgeois judiciary. Because in different bourgeois countries, many a time a similar thing has been experienced when the conservative section of the bourgeoisie has opposed the

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Proposal to vest unchallengeable supreme power in a particular organ may help

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the different social democratic moves endeavoured by the ruling section of the bourgeoisie, the social democrats.

The judiciary is stamped "reactionary" for defending attempted move to curtail its power and transform it into "committed judiciary"

Now apart from the fact that the judiciary at times stands in the way of introducing various steps and measures that the ruling section of the bourgeoisie aims at, in reality what appears to be more serious to the bourgeoisie is that the judiciary with the old traditional bourgeois sense of legality of the era of pre-monopoly competitive capitalism, and being relatively free and remaining out of the sphere of direct influence of the other two organs directly controlled by them is inadequate to serve their class interest to the extent they desire in the present era of monopoly capitalism and fascism. So it is not only for removing the obstacles that the judiciary often creates, but more so for bringing it under their full and direct control and for having a "committed judiciary" to fulfil their class interest and objective that attempts are made to strip off the traditional status and power that the judiciary once enjoyed during the *laissez faire* economy.

As is usually the case with the social-democrats, with a view to winning the moral sympathy and support of the people behind their actions, they try to make out a suitable plea for defending their attempted move to curtail that customary status and power enjoyed by the judiciary. As because the judiciary often stands in their way of adopting various social democratic measures which they pretend to undertake in the name of ameliorating the sufferings of the people (in reality these are aimed at consolidating the aggregate interest of capitalism) they blame the judiciary with its traditional status and power and try to pose it as 'reactionary' before the people and thereby try to create ground in favour of their attempted move to curtail its traditional status and power and transform it into a "committed judiciary".

Now in different countries, the ruling section of the bourgeoisie, the social democrats, wearing a radical cloak, off and on, take recourse to such all these various social democratic steps and measures. All these steps and measures clearly designed in a way to superficially appear as to be undertaken for giving economic and other relief to the people, on a crucial examination, are found to be nothing but palliatives that the fascists most often talk of in different countries to pose themselves as "progressives" and "pro-people" with the sole object of wining their confidence and get their support in their bid to concentrate and centralise absolute power in their hand and thereby establish all-out fascism in the country.

The ruling section of the bourgeoisie, the social democrats, for realising their class interest and objective may take recourse to various such surreptitious and deceptive means.

These no doubt conform to their basic class character. But the tragedy is, the so-called leftists even claiming communists, and Marxist-Leninists, failing to realise the underlying motives and objectives of all these social democratic steps and measures, become confused and bewildered by the apparent and superficial 'pro-people' stance associated with these measures, begin to level social democratic measures as "progressive measures", blame the judiciary as reactionary and in identical tune with the ruling section of the bourgeoisie, the social democrats raise a hue and cry in favour of curtailing the traditional status and power of the judiciary.

Those who, failing to realise the nature and objective of social democratism, directly or indirectly help to strengthen and consolidate it, should remember Comrade Ghosh's historic observation that, "Once fascism came out of the womb of social democraticism, now social democratism is the last prop of fascism".

Proposal to vest unchallengable supreme power in a particular organ may help strengthen and consolidate fascist forces

Now a pertinent question may be raised; in a bourgeois set up when both the parliament and the judiciary are nothing but the bourgeois organs, will it at all matter or make any appreciable difference in regard to the interests of the common working people of the country, if the existing power balance between the different organs is changed by curtailing the power of the bourgeois judiciary and vis-a-vis concentrating unquestionable and unchallengeable supreme legislative power in the bourgeois parliament? It is no doubt a fact that so long capitalism exists and the bourgeois system continues no basic remedy of the sufferings of the people can at all be realised either from the existing framework or by any amendment of the bourgeois constitution, whatsoever. But yet one has to ascertain whether even within a bourgeois set up there at all exists any material difference between a constitutional framework with separation of power among the different organs with suitable arrangement of check and balance of such power having a relatively independent (of course in a bourgeois sense) judiciary with its traditional status, jurisdiction and power of judicial review and a constitutional pattern with supreme unchallengeable legislative power in the hand of the bourgeois parliament or any other bourgeois organ along with a judiciary devoid of its traditional status, curbed of its power of judicial review and curtailed of its right to give protection against arbitrariness etc. etc.

Perhaps all are well conversant and we too have dealt in detail in our earlier issue (dated 15.3.76) how in different countries in spite of various difference existing in the detail of their constitutional framework, the bourgeoisie once accepted certain basic structure for their constitution, or in other word, whatever might be the differences, between constitutional details a more or less identifiable basic frame work for their constitution came into being in different bourgeois countries. And this basic structure which the bourgeoisie in the pre-monopoly era of capitalism once claimed to be reflecting the soul and spirit of their so-called democratic republic, mostly constituted of certain accepted formal rights, claimed to be the fundamental rights, separation of power between the different organs, the excutive, judiciary and the legislature with suitable arrangement of check and blance, and relatively free and independent judiciary with traditional status and power. They charged the judiciary with the power to work as a safeguard against executive tyranny manifested through illegal arbitrary action directed against individuals in a society violaing the rule of law. In countries, where the possibility of legislative tyranny might not be ruled out, the judiciary was entrusted with the right and responsibility of reviewing any enactment or any amendment of the constitution in the background of the original constitution, its spirit and objective laid down in different Clauses and Artieles of the original constitution. Apprehending lest a particular bourgeois political party' after capturing the legislature, if the latter was entrusted with supreme and unchallangeable power, with a view to utilising the same to realise narrow sectarian end, might take recourse to legislative tyranny, the bourgeoisie considered it judicious to empower the judiciary to interpret and declare any enactment or any constitutional amendment, if it deemed so, as *ultra vires*.. Perhaps there were other reasons too for entrusting the judiciary with such special powers In spite of the separation of the power existing between the different organs, perhaps the bourgeoisie apprehended that following the capture of legislature by particular political force, an identification of the legislature and executive would become unavoidable. And in such circumstances, the principle of check and balance of power with the objective of arresting the probability of growth of omnipotent, absolute, arbitrary tyranical power, could only at least had a chance to materilise if the third organ, namely the judiciary was empowered with the right to review both the actions of legislature and executive.

So long there is capitalism a free and independent judiciary with traditional status and power, may help to protect whatever little democratic rights still exist in a country

Now history has shown that in a bourgeois set up such a constitutional framework no doubt played not a completely insignificant role in safeguarding

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So long there is capitalism, a free and independent judiciary with traditional status and power, may help to protect whatever little democratic rights still exist in a country

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whatever little democratic rights that still could exist in a bourgeois country. So it is obvious that so long the bourgeois system exists those who desire to stand for democratic right and political liberty, may not perfer a change of such a framework by one that may help to create unchallengeable and uncontrollable supreme absolute power in the hand of any particular organ.

Now with the change of socio-economic and political condition in the bourgeois countries and with the emergence of monopoly capitalism, social democratism and fascism in the present era, the bourgeoisie has brought about alterations in their constitutional framework and attempts are being directed to change the much eulogised very basic structure of the constitution which the bourgeoisie once claimed to be unalterable. The concentration and centralisation of absolute and unchallengeable power necessiated the concentration of supreme power in a particular organ followed by curtailment of the power of the judiciary to review or scrutiny the action caused to be precipitated by that organ. The growing ailment of the democratic rights, political liberty, negation of the right to move to the judiciary to seek protection from any action deemed to be arbitrary—all are nothing but clear symptoms that reveal such concentration and centralisation of power by the fascists in different bourgeois countries.

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With a view tocreating a moral and public support in favour of the bid to curtail the power of the judiciary they ofen observe that the judiciary stands in the way of introducing various economic and other measures, stated to be planned for implementing the social and public commitment of the state. In reality, they speak of all these social democratic measures to win over the moral support of the people behind their attempt to remove any trace of opposition that may lie in the path of concentrating and centralising absolute power for realising their class interest.

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In this connection, one may not restrain oneself from making a comment on the observation stated to have been made by the 7-Parties Combination (West Bengal) comprising of CPI(M), RSP, FB, SP etc., on the proposed alterations of the constitution. They have been reported to have observed that the proposed suggestion may help to install one-party rule in the country. Now anyone acquainted with the lesson of Comrade Ghosh knows it very well that depending upon different objective conditions obtaining in different countries, fascism may manifest itself through either one-party rule or multi-party system or in many other diverse forms. So the underlying issue that is far more basic than the question of possibility of one-party rule being installed in place of a multi-party system, is whether the said proposals will help in consolidating and strengthening fascism in a country. It is queer indeed that the 7-party combination led by the CPI(M) have conspicuously evaded this very basic question.

All over the country we most often hear the danger of fascism and our duty to fight against it, whereas some apprehend that it is the fascists engaged in their attempt to centralise and concentrate absolute fascistic power who may reap maximum profit out of the proposals that are being put forward for amending the constitution. Any right thinking man should seriously ponder over it.

In regard to the centre-state co-ordination, the centre has been proposed to be given the power "to deploy police or other similar forces under its own superintendence and control in any state". Such a move may appear to be in conformity with the attempt to centralise political power. Not only that in a multi-nationality State like that of ours, such a move may accentuate the existing nationality oppression and nationality suppression. Over and above, none can guarantee that this will not provide the scope to unnecessarily interfere in the affairs of the state and that too particularly when the same political party may not be in power bothat the centre and at the states. The unhappy experience of the past has made some people apprehensive of such an eventuality.

Now, the People's Democracy (11. 1. 76), the CPI (M)'s English Organ, has observed "It necessary to make the autonomy of the state more real. For the economic development and prosperity of the Indian people, it is equally necessary to strengthen the Indian Union. This could be achieved only on the basis of real autonomy of the states and full-fledged guarantee of democracy.

It is only on this that the unity of the Indian Union can be safeguarded and further developed."

Anyone with the elementary knowledge of Marxism Leninism may be amazed if he seeks proletarian class angularity and attitude in this observation of our CPI (M) friends. We are enlightened by the lesson that in a class-divided bourgeois society where capitalism exists, the economic development and prosperity of the people can be achieved by strengthening such a state! Again, in a multinationality state, as a safeguard against the existing nationality oppression and suppression it is one thing to demand for state autonomy within a bourgeois constitutional frame-work. But can the unity of the working people of India be achieved and developed further simply if the state autonomy is a reality? We humbly put this question because we do feel that the real unity of the toiling people in any country can only be achieved and safeguarded by imbibing them with a real proletarian class consciousness alongwith organising and leading them in an anti-capitalist struggle to the extent of their fullest possible dedication. Perhaps our CPI (M) friends may be able to enlighten us with a new brand of Marxism-Leninism—let us see!

Now while rendering their unequivocal support to the proposals made by the Swaran Singh Committee, the CPI have made a 'revolutionary' suggestion for abrogating the right to property from the list of the fundamental rights in the constitution. A similar suggestion has also been made by the 'Tarakunde Committee' constituted by some lawyers and constitutional experts. From the reports that have been published in the daily press, it may appear that CPI (M) and its allies including RSP, FB etc have faced a dilemma in regard to such an 'actractive' and 'revolutionary' proposal. On the one hand they cannot keep silent on the question of deleting the right to property and become less 'revolutionary' than the CPI. But again who can assure that the full and unconditional support to the proposal of abrogating "the right to property" will not jeopardise their election prospects? Now the proposal that they have been stated to have made to meet both ends may only create confusion regarding their stand in this matter. It has been reported in the daily press that they have made the suggestion that the right to property of the vested interests must be curtailed. In political field, the "vested interest" is a very general political term that stands for the propertyed class, the ruling class and its allies against whom the working people have had to constantly launch struggle. Now in the question of abrogating or protecting the right to property in the constitution one should have to be more clear and precise and express in constitutional term and language what one means by 'vested interest" or otherwise one's stand may remain obscure and confusing. Some people of course think that they have intentionally preferred to take such a position so that both the sections who are in favour of or against the preservation of the right to property may not become antagonised against them.

We are, however astonished to note here a case of utter innocence and ignorance of the objective law of property that exists in human society. Who does not know except the ignorant of the scientific law of development of human society that a property cannot be abolished simply by deleting the property clauses from the bourgeois constitution? In no bourgeois constitution, right to exploitation exists in any written form of article or clause. But all know that a bourgeois state, bourgeois society with its economic system, has as its basis, the class exploitation. So long the capitalism, the bourgeois system will stay, the bourgeois property will also exist (whatever endeavour may be there to curtail and restrict it). It is simply by the overthrow of bourgeois system that one day the bourgeois property will come to an end, to be replaced by socialist property. It is a question of winning a hard battle and not a

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All high sounding "proposals for constitution amendments" by parties claiming Communists, Marxist-Leninists, are aimed at driving the people into the spell of constitutionalism

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stroke of pen on a paper. The present bourgeois property also emerged one day following a similar course. The bourgeoisie once overthrew the feudal property relation through hard battle, put an end to it and created bourgeois property relation in its place. The constitution was later framed up to give a legal and political sanction to it. Those who think that bourgeois property, one of the basis of the bourgeois society can be very simply eliminated by deleting the right to property, are either living in a fool's paradise or knowingly or unknowingly, creating the idea that one can Change the social structure simply by changing Articles and clauses of the Constitution according to one's sweet will—the same old rubbish constitutionalism !

In this connection, one particular suggestion made in the final report of the Swaran Singh Committee (Statesman, May 20, 1976) perhaps will draw the attention of many a people. Being guided by its opinion that "socialism should be clearly spelled out in the constitution", the committee has recommended that "The Preamble should be amended by substituting the expression 'Sovereign democratic, secular, socialist republic' for 'sovereign democratic republic". Even a layman is wise enough to realise that mere installation of a signboard with the word "socialism" can never bring about transformation within the socio-economic and political frame-work of a country and transform a bourgeois state into a socialist state. Perhaps further comment is superfluous.

Before concluding, in regard to constitutional changes, we would like to reiterate what we earlier observed (vide P. Era., 15.3.76) that in a bourgeois set up it will not at all be judicious to curtail the traditional jurisdiction, status and power of the judiciary. At times the judiciary may create obstruction in taking various social democratic measures. But this should not be taken as a plea for curtailing the power of the judiciary and concentrating unchallengeable supreme power in the hand of any particular organ. Because the social democratic measures, for aiding implementation of which the power of the judiciary has been proposed to be curtailed, cannot free the people from the yoke of capitalist exploitation. But as a consequence of this constitutional change, the worst thing may follow the fascists may try—to gather fruits. They may have their chance to fulfil their aim of concentrating unchallengeable supreme power in their hands.

So, whatever attempts may however be there to bring about constitutional changes, any right thinking man will feel the necessity of preservation and widening of democracy, democratic rights, political liberty and freedom, fundamental rights with the guarantee of its enforcement, and rule of law as a guard against arbitrary absolute power. And in a parliamentary democracy, under no pretext and under no circumstances the relative independence of judiciary, its traditional status and power, should be curtailed and the pattern of relative separation of power between the different organs with suitable arrangement of check and balance of power should be eliminated. Because any curtailment of the status and power of the judiciary, coupled with any move to vest unchallengeable supreme and absolute power in any particular organ will sound death-knell of whatever little democratic rights and political liberty of the people now exist in a set up where there is capitalism and thereby only help accentuate the rise of fascism.

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Some of them as a procedure for constitution amendment, have raised the demand for a referedum. In a capitalist country, in the background of an existing environment of mighty democratic movement, it is one thing to demand referendum in the question of ascertaining the opinion of the people with regard to any issue bearing importance in their lives. And when a revolutionary demands for such a referendum, he does so solely with the objective of strengthening the democratic movement. But do they ever know that to what an ultimate end, such a referendum may lead, in absence of the environment of people's movement, and that too at a time when the bourgeoisie themselves are seeking the sanction and support of the people in favour of their move for constitutional amendment ? It does not at all matter whether they reject the proposals of constitution amendment put forward by the ruling party or even talk of organising the opinion of the people in favour of their move. Because all these they may do to keep alive their anti-ruling party stance before the people, with an eye to the future election prospects. But in reality they, too, through their utterances of enough of high sounding proposals for constitutional changes are diverting the attention of the people from movement and driving them into the spell of constitutionalism. Because, do they not, through such moves and activities are trying to create the idea that if these proposals can somehow be inscribed in a bourgeois constitution then it may reflect the will and aspiration of the people ? Is it different in any way with the idea of the Khruschevite communists of transforming the bourgeois parliament, an instrument of the bourgeoisie into an instrument of people's will ? Again an intelligent person may not however fail to take note of the subtle aim and objectives lying behind these moves. Perhaps the sole intention is to make the people believe that if once they can assume power then all these proposals may be inscribed in the constitution and thereby bring about necessary changes in the socio-economic structure for ameliorating the sufferings of the people—a calculated move indeed for gaining the support of the people behind one's back for fulfilling the objectives of one's election oriented politics. ....
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Finally, we would like to appeal to the rank and file, the workers and cadres of all the left and democratic parties, the left and democratic minded people, the democrats, and all other who really believe in democracy, democratic and political rights to realise the gravity of the situation. We are passing through a phase when the attempts to concentrate and centralise unchallengeable absolute power, knowingly or unknowingly, is being aided by the move or moves undertaken by the parties claiming leftists, communists, Marxist-Leninists or socialists. ...
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BENAM LANDS

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lands. They have done so cheating the government, people and the country. They have evaded law with the corrupt administrative machinery and existing law. Is it not correct ? So it is perfectly justified and moral to acquire such lands ; even in the interest of the state such acquisition is fully justified. This being the position, why not ask the peasants to acquire such 'benam' lands ? It is not at all difficult for the organised disciplined peasants' movements to detect and acquire such land. But the government must see the police does not interfere in this movement on the plea of maintaining law and order. For, this is a very democratic and legitimate movement. .....When the peasants acquire the 'Benam' land the government should regularise by bringing in suitable legislation as has been done in case of unauthorised occupation of land by refugees". He further observed, "It should be realised that in a capitalist society to depend on law and law alone will not deliver any good to the people. Because whatever is legal is not necessarily justified, moral and humanistic. It is more true in a capitalist society of the present day where order has become injustice. On the basis of this outlook the United Front Government will have to patronise the mass movements. If the gevenment can perform this work correctly then a real work for the people will be done. And it will be as good as cheating the people if this work is not done—however much is spoken of otherwise." [Socialist Unity—Vol. 1, No. 6 (New Series)]. And this whole lesson is true still to day.

It would, therefore, be obvious whatever hopes may be tried to be reposed on the present move of the government, nothing short of the approach and method, enunciated by Comrade Ghosh, can go to the desired extent of tackling the problem of recovering and distributing the 'benam' lands to the landless and destitute peasants We should further reiterate that although from the platform of democratic movement of the poor and landless peasantry, the question of recovery and distribution of lands now in illegal occupation of the jotedars in excess of the land ceiling laws has been made one of the major demands, even if this is done fully and completely, cannot, however, solve the basic problem in peasant's life which can only be done with the successful completion of the task of anti capitalist revolution in our country. For, so long capitalism remains, concentration of land in the hands of a few and growing proletarinaisation of the peasantry are the inevitable results of the same process of capitalist exploitation.

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